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Total Number of Pages in This Submission **21**

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Filing Date	11/12/2003
First Named Inventor	Kushner, Robert G.
Art Unit	3702
Examiner Name	Morgan, Jack Jr.
Attorney Docket Number	50065.00008

ENCLOSURES <i>(Check all that apply)</i>		
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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Stuart A. Whittington, Esq.		
Signature	/Stuart A. Whittington/		
Printed name	Stuart A. Whittington		
Date	March 6, 2009	Reg. No.	45,215

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Robert Gerald Kushner Atty. Docket: 50065.00008

Appln. Ser. No.: 10/712,792 Group Art Unit: 3782

Filed: 11/12/2003 Examiner: Morgan Jr., Jack H.

For: PERSONAL ARTICLE HOLDER WITH ACCOMPANYING TOOL

Mail Stop Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO NOTICE OF NON-COMPLIANT APPEAL BRIEF

In the Notice, the Office alleges certain deficiencies are present in Appellant's Brief in Support of Appeal filed August 8, 2007. By the attached Amended Brief, Appellant attempts to address any noted deficiencies. This Amended Brief is being filed within the one month period for reply required in the Notice and thus no extension of time is believed necessary.

Respectfully submitted,

Date: March 6, 2009

/Stuart A. Whittington/

Stuart A. Whittington
Attorney for Appellant
Registration No. 45,215

(480) 203-3235

APPELLANT'S Amended APPEAL BRIEF
U.S. Appln. No. 10/712,792

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In re application of:

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AMENDED BRIEF ON APPEAL (SECTIONS V. and VII. and ONLY)

Pursuant to Appellant's Brief on Appeal presented August 8, 2007 and the notice of non-compliant appeal brief dated February 6, 2009, Appellant presents this amended Brief in appeal of the Final Rejection dated February 7, 2007.

APPELLANT'S Amended APPEAL BRIEF
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V. SUMMARY OF CLAIMED SUBJECT MATTER.

The independent claims subject to this appeal are summarized and mapped to the specification as follows:

1. A personal article holder (10, 500, 600, 700; Figs. 1-3, 5-7) comprising:

a clamping body having a clamping position and an open position and comprising an upper arm (20; Fig. 1); a lower arm (30; Fig. 1) pivotally (40; Fig. 1) connected at one end thereof, to a corresponding end of the upper arm such that personal articles may be retained between the upper and lower arm (spec. par. [0025]), said clamping body also having a cavity (25, 525, 625, 726; Figs. 1, 5-7) formed therein (spec. par. [0026]);

attachment means (35, Figs. 1, 7; spec. par. [0025], which may be any mechanism or arrangement for facilitating temporary or permanent fixation of clamping body to other surfaces including a clip, a magnet, VELCROtm, a suction cup, double sided tape, etc.; spec par. [0032]) connected to the clamping body for attaching the clamping body to a desired surface; and

a tool (26, 526, 626, 735, 736; Figs. 2 and 4-7) operative to be removably inserted into said cavity, wherein the clamping body further comprises a cushion member (52, 54; Fig. 1) disposed on opposing surfaces of each of the upper and lower arms, wherein the

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cushion members are operative to secure a personal article there between when the upper and lower arms are in the clamped position (*spec. par. [0028]*).

9. A holder (10, 500, 600, 700; Figs. 1-3, 5-7) for supporting and securing objects comprising:

an upper arm member (20; Fig. 1) having a first cushion (52; Fig. 1) disposed on a bottom side thereof and a cavity (25; Fig. 1) disposed on a top side thereof;

a lower arm member (30; Fig. 1) including a second cushion member (54; Fig. 1), the lower arm member having side thereof hingedly attached to a corresponding side of the upper arm member such that the upper and lower arm members form a clamping body whereby the first and second cushions face one another to secure an article there between when said upper and lower arm members are in a closed position (*spec. pars. [0026] and [0028]*);

a tool (26, 526, 626, 735, 736; Figs. 2 and 4-7) removably insertable into said cavity; and

an attachment portion (35, Figs. 1, 7; spec. par. [0025]) disposed on a surface of the lower arm member opposite the second cushion member, the attachment portion for attaching the holder to a desired surface.

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17. A holder of personal articles comprising:

clamping means (*upper arm 20, lower arm 30, pivot 40; Fig. 1; spec. pars [0025], [0029], [0031] and as shown in Fig. 5-7*), for clamping at least a portion of a personal article in a secure position, the clamping means including clasp means (*not separately designated but shown in upper left corner of Fig. 1 and described in detail in Appellant's own prior U.S. Patent 6,564,432- of record*) for securing the clamping means in a clamped position and cushion means (52, 54; *Fig. 1; spec. par. [0028]*) for gently and securely grasping the portion of the personal article when the clamping means is in the clamped position;

attachment means (35, *Figs. 1, 7; spec. par. [0025]*, which may be any mechanism or arrangement for facilitating temporary or permanent fixation of clamping body to other surfaces including a clip, a magnet, VELCROtm, a suction cup, double sided tape, etc.; *spec par. [0032]*) for attaching the clamping means to a desired surface; and

tool securing means (*cavities 25, 525, 625, and 726 and protrusions/panels 27, 528, 628, 725, 727, 729; Figs. 3 and 5-7; spec. pars. [0030], [0033], [0034], [0036]*) disposed on a surface of said clamping means for securing a provided tool to said clamping means.

(End of Section V)

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VII. ARGUMENT.

A. APPELLANT'S CLAIMS 1, 7, 17 and 21 ARE NOT ANTICIPATED BY SUZUKI.
LEGAL STANDARD.

It is well established that a claim is only anticipated under 35 U.S.C. § 102 if each and every feature as set forth in the claims is found, either expressly or inherently described, in a single prior art reference. *Verdegall Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236 (Fed. Cir. 1989).

ARGUMENT.

In the instant case, the Office Action alleges Suzuki discloses all of the features of Appellant's **independent claim 1** which recites:

A personal article holder comprising:

a clamping body having a clamping position and an open position and comprising an upper arm; a lower arm pivotally connected at one end thereof, to a corresponding end of the upper arm such that personal articles may be retained between the upper and lower arm, said clamping body also having a cavity formed therein;

attachment means connected to the clamping body for attaching the clamping body to a desired surface; and

a tool operative to be removably inserted into said cavity, wherein the clamping body further comprises a cushion member disposed on opposing surfaces of each of the upper and lower arms, wherein the cushion members are operative to secure a personal article there between when the upper and lower arms are in the clamped position..

Suzuki discloses a combination eyeglass holder and card holder. (See Figs. 1-6 and par. [0023]). The Office Action alleges that element 20 of Suzuki is analogous to a *tool operative to*

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be removably inserted into [the device] cavity as claimed in Appellant's claim 1 or Suzuki card holder is analogous to the "tool securing means" as alleged recited in Appellant's independent claim 17. Respectfully, Appellant submits that element 20 is not a tool within the context of Appellant's specification, it is a card such as a business card. (Suzuki par. 0004; 0005; 0006; 0014, etc.). Appellant respectfully submits that the Office Action is interpreting its claim limitations with undue breath and in a manner which is inconsistent with how one of ordinary skill in the art would interpret Appellant's claims when read in light of Appellant's disclosure.

The Office is required to interpret claims using the broadest *reasonable* interpretation which is consistent with the interpretation that those skilled in the art would give. *In re Cortright*, 165 F.3d 1353,1359 (Fed. Cir. 1999). Such interpretation must also be consistent with the specification. *In re Prater*, 415 F.2d 1393, 1404-05 (CCPA 1969).

In the Advisory Action dated 5/21/2007, the Examiner confirms its interpretation that Suzuki's business card or credit card (or respective holder) is considered to be analogous to Appellant's claimed "tool" (or "tool securing means"). Appellant continues to respectfully disagree and assert that the business cards or even gas cards disclosed by Suzuki are NOT analogous to Appellant's claimed "tool".

With respect to claim 17, Appellant submits that the claim language invokes interpretation under 35 U.S.C. 112, sixth paragraph. Accordingly, the "tool securing means" can only be anticipated by Suzuki if the corresponding structure described Appellant's specification and equivalents thereof, are disclosed by Suzuki. *In re Donaldson*, 16 F.3d 1189 (Fed. Cir.

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1994) and *In re Dossel*, 115 F.3d 942 (Fed. Cir. 1997). Apart from the fact that the Examiner has not even applied proper Office procedures in interpretation of Appellant's means plus function elements, Appellant respectfully submits that the "tool securing means" structure (e.g., Figs. 3, 5, 6) disclosed in its specification is indisputably different than the card holder disclosed by Suzuki. Furthermore, Suzuki's card holding structure is not functionally equivalent, or even asserted to be, as that disclosed in Appellant's specification.

Lastly, Appellant's independent claim 1 recites the "clamping body [comprising an upper arm pivotally connected at one end thereof to a lower arm to retain personal articles there between] also having a cavity formed therein." To the extent Appellant understands the Suzuki reference, there is no cavity formed in a clamping body (e.g., formed by Suzuki middle upper case 12 and glasses clip 13) which holds spectacles (personal articles). In fact, it appears that Suzuki includes an entirely separate arm member (i.e., lower case 11) to hold its cards.

Because Suzuki fails to disclose Appellant's claimed *cavity, a tool operative to be inserted into the cavity, or tool securing means* it cannot anticipate either of Appellant's independent claims 1 and 17 (or the claims which depend there from). In view of the foregoing, the Board is respectfully requested to overturn the 102 rejection based on Suzuki.

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B-II. APPELLANT'S CLAIMS ARE PATENTABLE OVER THE CITED PRIOR ART COMBINATIONS

LEGAL STANDARD

The PTO bears the burden of establishing a proper case of *prima facie* obviousness. *In re Rijckaert*, 9 F.3d 781, 783 (Fed. Cir. 1993). In order to satisfy this burden, [the Office personnel] must: (a) determine the scope and contents of the prior art; (b) ascertain the differences between the prior art and the claims in issue; (c) determine the level of ordinary skill in the pertinent art; and evaluate any evidence of secondary considerations. *Graham v. John Deere Co.*, 383 U.S. 1, 17-18 (1966). If the proposed modification or combination of the prior art would "change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious." *In re Ratti*, 270 F.2d 810 (CCPA 1959). Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one reference might accurately discredit another. *In re Young*, 927 F.2d 588 (Fed. Cir. 1991). If proposed modification would render the prior art unsatisfactory for its intended purpose, there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900 (Fed. Cir. 1984). A statement that modifications of the prior art to meet the claimed invention would have been "well within the ordinary skill in the art at the time the claimed invention was made" because the references relied upon teach all aspects of the claimed invention were individually known in the art is not sufficient to establish a *prima facie* case of obviousness without some object reason to combine

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the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993). Instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 550 U.S. _____, 82 USPQ2d 1385, 1396 (2007).

ARGUMENTS REBUTTING OBVIOUSNESS

B. APPELLANT'S CLAIMS 1, 2, 7, 9-11, 14, 17-18 AND 20-22 ARE PATENTABLE OVER AINLEY IN VIEW OF CHANG.

Appellant respectfully submits that *prima facie* obviousness has not been established in respect to any of the present rejections because: (i) an objection reason for modifying Ainley with Chang has not been alleged and in fact, there is no legitimate reason these references would be combined as proposed in the Office Action; and (ii) the Office has failed to properly determine the scope and contents of the prior art and the differences between the prior art and Appellant's claimed invention in that even the combination of references would fail to teach or suggest the limitations present in Appellant's claims.

THERE IS NO OBJECTIVE REASON TO COMBINE/MODIFY AINLEY AND CHANG

In the first of the 103 rejections based on Ainley as a primary reference, the Office Action relies on Ainley to disclose the majority of Appellant's independent claim limitations (e.g., claims 1, 9 and 17) with the exception of *a tool operative to be removeably inserted into a cavity* (claims 1 and 9), or *tool securing means disposed on a surface of said clamping means* (claim 17).

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The Office Action attempts to remedy this deficiency of Ainley by relying on Chang, which discloses a clip board having a removable calculator to make up for this notable deficiency alleging “[i]t would have been obvious to a person having ordinary skill in the art.... to configure the recess (which Appellant submits serves no purpose other than an aesthetic appearance) of Ainley et al. in such a manner to be able to removably insert Chang's calculator in order to provide a convenient mounting surface for the calculator.” Appellant respectfully disagrees and submits that there is no proper motivation for combining/modifying Ainley with Chang as suggested as suggested in the Office Action and thus all rejections based upon this reasoning are believed improper and should be withdrawn on this basis alone. The Office Action alleges it would be obvious for the skilled artisan to modify Ainley with the calculator of Chang “in order to provide a convenient mounting surface for the calculator.” (8/17/06 Office Action pg. 8 and 2/7/07 Final Office Action pg. 3). Appellant continues to believe that this alleged articulation to combine/modify references is fundamentally flawed. Because Chang already discloses a clip which has “a convenient mounting surface for the calculator.” the motivation suggested in the Office Action record is not supported by any “rational underpinnings” and thus cannot support a legal conclusion of obviousness. *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___ , 82 USPQ2d 1385, 1396 (2007). Accordingly, Appellant believes the rejections which propose the combination/modification of Ainley with Chang are believed to be insufficient on its face and should be withdrawn.

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In point of fact, Appellant can find no legitimate reason why one of ordinary skill in the art would modify Ainley, which indisputably discloses a caddy designed for holding various types of spectacles (Ainley col. 1, ll. 1-5; 19-22; 36-37, etc.), and Chang, which discloses a clipboard for holding paper that includes a calculator. While it is apparent why a calculator would be useful in conjunction with a clipboard and paper, there is no such apparent reason why a spectacles caddy should include a calculator or integrated removable tool/accessory. More likely, Appellant respectfully submits, the motivation to do so, and in the specific arrangement claimed by Appellant, is derived solely on the impermissible hindsight of Applicant's disclosure.

"The key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007). "[R]ejections on obviousness cannot be sustained with mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006; emphasis added).

Because the proposed motivation for combining/modifying Ainley and Chang is not present in either of the cited references, and because no articulated reason having any rational underpinnings appears to exist for combining/modifying these references (or has one been alleged), Appellant submits that *prima facie* obviousness has not been established. In view of this reason alone, Appellant respectfully submits that the rejection of Appellant's claims based on the combination of Ainley and Chang are improper and should be overturned.

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THE COMBINATIONS BASED ON AINLEY AND CHANG FAIL TO TEACH OR SUGGEST APPELLANT'S CLAIM LIMITATIONS.

The entire premise of the rejections based on the combination of Ainley and Chang is that the Office Action alleges that Ainley discloses a "cavity" formed in the clamping body which could be configured or modified to hold the calculator of Chang (8/17/06 Office Action pg. 7; 2/7/07 Final Office Action pg.). The 2/7/02 Final Office Action describes it as an "un-numbered recess in the top middle face of 3..." Because it is not numbered or referenced in the cited patent, Appellant can only assume the slight circular recess shown in the figures of Ainley and referenced by the Office Action does not appear to serve any utilitarian purpose and therefore is merely an ornamental feature. Thus this alleged "cavity" disclosed by Ainley, even if combined with the calculator of Chang, is NOT a cavity into which a tool (i.e., Chang's calculator) could be insertably removed as expressly recited in Appellant's independent claims 1 and 9 (note that Ainley has a minor circular depression and Chang shows a rectangular calculator).

Moreover, "the un-numbered recess" cannot be considered *a tool securing means* as claimed in Appellant's independent claim 17. In fact, by the Office Action's own statement, the "cavity" of Ainley would still have to be modified, if even possible, to receive Chang's calculator. While the Chang clipboard may include such a cavity, Chang's clip omits several other elements expressly claimed by Appellant and thus even when Ainley is modified with Chang as proposed in the Office Action, the limitations expressly recited in Appellant's independent claims 1, 9 and 17 are not disclosed or suggested and certainly at least without requiring "further" modification.

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For all the foregoing reasons, Appellant respectfully submits all the pending claims are patentable over the combinations based on Ainley and Chang and requests the Board to overturn this §103 rejection based on the combination of Ainley and Chang.

C. **APPELLANT'S CLAIM 8 IS PATENTABLE OVER AINLEY IN VIEW OF CHANG AND IN FURTHER VIEW OF LEUNG.**

Appellant's claim 8 depends from claim 2 and includes the limitations of independent claim 1 by virtue of its dependency thereon. Applicant respectfully submits that Leung is cited to teach certain features regarding a calculator but fails to remedy the deficiencies with respect to the rationale for combining, as well as the resulting teachings of, Ainley and Chang as previously discussed in numbered paragraph B. Accordingly, Applicant submits that the rejection of claim 8 is improper and should be overturned for at least the same reasons previously discussed and such action is respectfully solicited.

D. **APPELLANT'S CLAIMS 1, 2, 7, 9, 11, 14 AND 18 ARE PATENTABLE OVER HOLLAND IN VIEW OF JO.**

Appellant respectfully submits that prima facie obviousness has not been established in respect to any of the present rejections based on the combination of Holland and Jo because: (i) an objection reason for modifying Ainley with Chang has not been alleged and in fact, there is no legitimate reason these references would be combined as proposed in the Office Action; and (ii) the Office has failed to properly determine the scope and contents of the prior art and the differences between the prior art and Appellant's claimed invention in that even the combination of references would fail to teach or suggest the limitations present in Appellant's claims.

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THERE IS NO OBJECTIVE REASON TO COMBINE/MODIFY HOLLAND AND JO AS PROPOSED

Claims 1-2, 7, 9, 11, 14 and 18 are rejected under 35 U.S.C 103 based on the combination of Holland and Jo. The Office Action cites Holland as disclosing the limitations of the rejected claims with the exception of cushion members disposed in the clamp. To make up for this deficiency, the Office Action relies on Jo alleging "it would have been obvious...to make the holder of Holland with the cushions and attachment clip of Jo in order to securely grip the item being held without damaging it, as well as to attach the object holder to the clothing of a user."

In rebuttal, Appellant respectfully submits that again, this does not appear to be an objective reason to combine Holland and Jo in the manner proposed in the Office Action. Holland, similar to previously cited Chang, is directed toward use with a clip board (See Fig. 8) and is used for holding paper. Appellant respectfully submits that first, there is no reason to suspect that gripping an item using the clip shown by Holland (Fig. 4) would damage an item being held (i.e., paper). Second, Holland already discloses a means for potential hanging clamping apparatus 10 (via base member 12) using an aperture 29 and corresponding fastener or an adhesive or magnet (Holland; col. 3, ll. 38-49).

Respectfully, the proposed combination/modification of these references, as with those previously proposed, is transparently derived in the piecemeal attempt to reconstruct Appellant's claims using the impermissible hindsight of Appellant's disclosure as a guide. As is well established from *KSR*, simply because a reference can be modified to meet the limitations of an

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Appellant's invention does not render the invention obvious without some articulated reasoning having some rational underpinning to support the legal conclusion of obviousness. Appellant respectfully submits that since the rationale of record, i.e., Holland's device fails to securely grip and causes damages to items does not appear exist (the alleged motivation for modifying with the cushions of Jo) there is no proper rationale to include the cushion members or attachment clip of Jo in the clamping apparatus with removably assembly of Holland (and certainly not placed in the specific manner claimed by Appellant). Thus *prima facie* obviousness is not believed to have been established. For this reason alone, all 103 rejections based on the proposed combination of Holland and Jo are believed to be improper and should be overturned.

THE COMBINATION OF HOLLAND AND JO FAIL TO TEACH OR SUGGEST THE LIMITATONS PRESENT IN APPELLANT'S REJECTED CLAIMS

Even assuming it would be proper to modify Holland with the teachings of Jo as proposed in the Office Action (*arguendo*), these references taken alone or in combination, fail to teach or suggest the limitations present in Appellant's independent claims 1, 9, 17 or the claims which depend there from (claims 2, 7, 11, 14 and 18). For example, claim 1 recites *a lower arm pivotally connected at one end thereof, to a corresponding end of the upper arm*. By contrast, Holland, which is cited as disclosing an analogous clamping body discloses a pivot mechanism (c.g., hinges 18) which are connected in a middle area (see Fig. 4) as opposed on corresponding ends/sides of a clamping body as recited by Appellant's claims. The position of the pivot between upper and lower arms of Holland (readily seen in Holland Fig. 4) is crucial to be located in a middle portion, to "facilitate a user pressing thereon [rear portion of upper member 14] to

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separate the forward edge portions 13a, 15a of the base and upper members 12, 14, respectively (Holland; col. 3, ll. 10-15).

The Office Action alleges that these are "ends" and analogous to the bottom surface of the upper arm and top surface of the bottom arm. However once again, the Office appears to be interpreting Appellant's claims incorrectly and/or with undue breadth. The skilled artisan would recognize that the opposing surfaces of the Holland's clamp 10 are not "ends" pivotally connected. Appellant's claim 14 further requires a clip disposed on a surface of the lower arm opposite the cushion member. This is not possible with the Holland clip configuration.

Because Holland fails to teach or suggest at least the claimed upper and lower arm members pivotally connected on corresponding ends, Holland cannot disclose the clamping body claimed by Appellant in claim 1 or related limitations in claim 9 or the corresponding structure and its functional equivalents of the clamping means recited in independent claim 17 (as well as the rejected claims which depend therefrom).

Lastly, claim 18 by virtue of its dependency on claim 17 requires a "clasping means," which is not only not disclosed or suggested by Holland, but in fact Holland teaches away from this limitation and instead requires a spring element 26.

For all the foregoing reasons, Appellant respectfully requests the Board to overturn the 103 rejection based on the combination of Holland and Jo.

E. **APPELLANT'S CLAIMS 10 AND 20 ARE PATENTABLE OVER HOLLAND IN VIEW OF JO AND IN FURTHER VIEW OF AINLEY.**

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Appellant's claims 10 and 20 respectively depend from independent claim 9 and include claim 9 limitations by virtue of their dependency thereon. Applicant respectfully submits that Ainley is cited to teach certain features regarding plastic but fails to remedy the deficiencies with respect to the rationale for combining, as well as the resulting teachings of, Holland and Jo as previously discussed in numbered paragraph D above. Accordingly, Applicant submits that the rejection of claims 10 and 20 is improper and should be overturned for at least the same reasons previously discussed and such action is respectfully solicited.

F. APPELLANT'S CLAIM 8 IS PATENTABLE OVER HOLLAND IN VIEW OF JO IN FURTHER VIEW OF LEUNG.

Appellant's claim 8 depends from claim 2 and includes the limitations of independent claim 1 by virtue of its dependency thereon. Applicant respectfully submits that Leung is cited to teach certain features regarding a calculator but fails to remedy the deficiencies with respect to the rationale for combining, as well as the resulting teachings of, Holland and Jo as previously discussed in numbered paragraph D above. Accordingly, Applicant submits that the rejection of claim 8 is improper and should be overturned for at least the same reasons previously discussed and such action is respectfully solicited.

G. APPELLANT'S CLAIM 19 IS PATENTABLE OVER HOLLAND IN VIEW OF JO IN VIEW OF AINLEY IN FURTHER VIEW OF SUZUKI.

Appellant's claim 19 depends from claim 1 and includes the limitations of independent claim 1 by virtue of its dependency thereon. Applicant respectfully submits that Suzuki is cited to teach certain features regarding ABS plastic but fails to remedy the deficiencies with respect to the rationale for combining, as well as the resulting teachings of, Holland and Jo as previously

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discussed in numbered paragraph D above. Accordingly, Applicant submits that the rejection of claim 19 is improper and should be overturned for at least the same reasons previously discussed and such action is respectfully requested.

H. APPELLANT'S CLAIMS 19 AND 22 ARE PATENTABLE OVER SUZUKI IN VIEW OF AINLEY.

The Office Action alleges that Suzuki (JP 10226279 cited above in Paragraph A in respect to the 102(b) rejections of Appellant's independent claims 1 and 17) discloses all the limitations of claims 19 and 20 with the exception of clamping means comprising an upper and lower arm formed of an injection molded plastic. The Office Action relies on Ainley to make up for this deficiency. Appellant's claim 19 depends from independent claim 1 and claim 22 depends from independent claim 17. Appellant respectfully submits that even assuming it were proper to combine these references as suggested (*arguendo*), Suzuki and Ainley, taken alone or in combination, fail to teach or suggest the limitations recited in Appellant's claims 19 and 20, or claims 1 and 17 from which they depend.

As discussed previously in number paragraph A above with respect to the rejection under 35 U.S.C. § 102, Suzuki discloses a dual holder for 1 for holding cards and glasses. There is no tool or tool securing means disclosed or suggested by Suzuki as implied by the Final Office Action dated 2/7/07. Accordingly, Suzuki fails to disclose or suggest the limitations present in claims 19 and 20 by virtue of their dependency on independent claims 1 or 17:

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- a tool operative to be removably inserted into said cavity (as recited in claim 1 from which claim 19 depends)

-tool securing means disposed on a surface of said clamping means for securing a provided tool to said clamping means (as recited in claim 17 from which claim 22 depends)

Because Suzuki and Ainley, taken alone or in combination, fail to teach or suggest these features, *prima facie* obviousness has not been established with respect to these claims. For all the foregoing reasons, Appellant respectfully submits the 103 rejection based on Suzuki and Ainley is improper and should be overturned.

(End of Section VII)

Respectfully submitted,

/Stuart A. Whittington/

Stuart A. Whittington
Attorney for Appellant
Registration No. 45,215

(480) 203-3235

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